



Pennsylvania Orthopaedic Society v. Independence Blue Cross, 885 A.2d 542 (Pa. Super. Ct. 2005)

Topics Covered: Payment Issues (for Physicians), Managed Care Payments

Outcome: Very Unfavorable

Issue

The issue in this case was whether medical societies should have the right to communicate with their members regarding legal matters.

AMA Interest

The AMA supports the right of medical societies to communicate with their members.

Case Summary

The Pennsylvania Orthopaedic Society and several orthopedic surgeons sued IBC, alleging systematic underpayment of claims for medical services. After about three years of litigation, the parties decided to settle. Rather than simply settling the claims of the orthopedic surgeons who brought the lawsuit, the parties expanded the case to a class action, to cover any physicians who might potentially have claims against IBC.

The medical societies of Pennsylvania and New Jersey as well as the Pennsylvania Psychiatric Society attempted to intervene in the lawsuit to oppose the proposed settlement. Although the judge allowed the Pennsylvania Orthopaedic Society to appear as a party in the lawsuit, he would not allow these other medical societies to do so.

The trial court entered a 136 page order, which approved the settlement agreement. It also invalidated the vast majority of the approximately 13,000 elections by physicians to "opt out" of the plaintiff class and ordered that new notices be sent to those physicians who had opted out, attempting to bring these physicians back into the plaintiff class. The order found that the opt outs had been procured through misrepresentations in communications sent by certain state medical societies (and by counsel to one of these societies) to their members. The trial court enjoined "medical societies/associations" from communicating in any manner with class members about the settlement unless such further communications were first approved by the trial court.

The "gag order" expired coincident with the expiration of the new opt out period. Although approximately 11% of the plaintiff class opted out a second time before the deadline, IBC

elected to proceed with the previously approved settlement, which the trial court finally approved.

The Superior Court affirmed the approval of the settlement. It found that there were no grounds for enjoining the AMA. However, it also found that the AMA had not been bound under the gag order. The Pennsylvania Supreme Court denied an appeal.

Litigation Center Involvement

The AMA asked for leave to file a brief as amicus curiae so that it could advise the court about certain deficiencies in the settlement agreement, but the court refused to allow it to do so.

The AMA and the state medical societies most directly impacted by the settlement believed that the trial court's "gag order" significantly infringed on their rights of free expression and association, guaranteed by, among other laws, the First Amendment to the United States Constitution. Various appeals were filed, including an appeal by the AMA.

Pennsylvania Superior Court principal brief

Pennsylvania Superior Court reply brief